IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.12.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE M.VENUGOPAL

W.A. NO. 1124 OF 2007
AND
M.P. NO. 2 OF 2007

The Member Secretary
Chennai Metropolitan Development
Authority
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008. .. Appellant

- Vs -

1. The United Colony Flat
   Owners Welfare Association
   rep. by Power Agent
   A.Periakaruppan
   West Avenue, Kamaraj Nagar
   Thiruvanmiyur, Chennai 600 041.

2. The Corporation of Chennai
   rep. by its Commissioner
   Rippon Building, Chennai 600 003. .. Respondents

Writ Appeal filed against the order dated 22.02.2007 passed by learned single Judge in W.P. No.19769/06, filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for records of the 1st respondent comprised in letter No. C3/6590/2006 dated 9.5.2006, quash the same in so far it pertains to condition No.1 of the impugned order as illegal, arbitrary, ultravires the provisions contained in the Development Control Rules and consequently direct the 1st respondent herein to process the application of petitioner dated 28.3.2006 and issue planning permission as long in accordance with Development Control Rules applicable to mixed residential zone for putting up IT/commercial building.

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For Appellant : Mr. P.S.Raman, AAG, for Mr. Kathiravan

For Respondents : Mr. R.Muthukumaraswamy, SC, for
Mr. S.Ramesh for R-1
Mr. A.Mohamed Ghouse for R-2

JUDGMENT

S.J.MUKHOPADHAYA, J.

This appeal has been preferred by the Chennai Metropolitan Development Authority, (hereinafter referred to as 'CMDA') against order dated 22nd Feb., 2007, passed by learned single Judge in W.P. No.19769/06. By the said order, learned single Judge set aside the objection as was raised by CMDA, vide reason No. (i), cited in the impugned order dated 9th May, 2006, and the respondent United Colony Flat Owners Association (hereinafter referred to as 'Association') was directed to resubmit the planning permission application before the CMDA after complying with the other conditions contained in the said order dated 9th May, 2006 from S. Nos.2 to 12. The CMDA, in its turn, has been directed to examine the same in accordance with law with particular reference to Rule 17 (e) read with Annexure XV to the Development Control Rules and to pass appropriate orders thereon.

2. The first respondent is a registered Association whose members had purchased residential flats from the Tamil Nadu Housing Board in the land in survey field No.168, old survey No.41/5B, 41/2AB and 41/6AB, bearing Door No.M38-A to M38-L, 39-A to 39-F and 40-A to 40-L, West Avenue, Kamaraj Nagar, Thiruvanmiyur, Chennai. The total extent of land over which all those tenements are constructed and sold by Tamil Nadu Housing Board is 2,634 sq. mtrs. The members of the association joined together and decided collectively to demolish all the units and to develop an Information Technology Park and application in this regard was made before the CMDA on 23rd Aug., 2005. Initially, by a communication dated 3rd Feb., 2006, CMDA informed the association that the site in question falls under 'Mixed Residential Use Zone' and since the site was in Tamil Nadu Housing Board approved residential layout, a multi-storied building (MSB) or building for Information Technology was not permissible. However, it was stated in the same letter that the ordinary buildings (ground floor + first floor) and special buildings (ground + 3 floors or stilt + 4 floors) on road of 10 mtrs., for IT/Commercial/Retail and Shopping/Residential uses are permissible subject to the satisfaction of the road width requirement and Development Control Rules. The association was asked to obtain 'No Objection Certificate' from Tamil Nadu Housing Board as a pre-requisite condition for approval of ordinary/special building in the site under reference.

At that stage, the association preferred a writ petition, W.P. No.1198/06 for a direction on the CMDA to entertain, consider and grant

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approval for demolition and construction of a new building, without insisting on production of NOC from the Tamil Nadu Housing Board. The said writ petition was disposed of on 14th Feb., 2006, in favour of the association with a direction to CMDA to receive the application for building plan for approval and to process the same on merits without insisting on production of NOC from the Tamil Nadu Housing Board. It is only thereafter the CMDA rejected the claim setting out 12 reasons, first of which reads as follows :-

> "The site under reference lies in an approved residential layout, wherein the proposed activity (IT Park) is not permissible."

3. Similar ground was taken by CMDA before the writ court as was shown in the order dated 9th May, 2006, as also before this Court. According to them, the site under reference lies in an approved residential layout, wherein the proposed activity, viz., IT park was not permissible. Layout plan was also produced before learned single Judge to show that there is a Thiruvanmiyur neighbourhood scheme as approved in LPS/DTP No.28/74 and 49/74. Therefore, according to CMDA, that being the admitted position as the site under reference falls under an approved residential layout, it cannot be allowed for development of IT park.

4. We have heard the parties and noticed the submission as made by learned Addl. Advocate General, particularly, the ground that no IT Park could be allowed in an approved residential layout. Such submission was made under reference to Rule 4 of the Development Control Rules of CMDA, particularly clause (iii) (a) of 2nd Explanation to said Rule 4.

Rule 4 relates to designation of use of master plan or detailed development plan which prescribe that where the use of site or premises is specifically designated under the development plan, it shall be used only for the purpose so designated. Where the use of site or premises is not specifically designated under the development plan, it can be developed in conformity with the users permissible in the zone in which such site falls. Under clause (iii) (a) of 2nd Explanation to Rule 4, provision has been made in respect of an area where detailed layout plan or development plan prepared and approved by the authority or the competent body, as quoted hereunder :-

> "(iii) (a) Where for an area a detailed layout plan of land development has been prepared and approved by the Authority or such other Executive Authority or local body or Agency or person which the power has been delegated by the Authority the zoning shown on such layout plan shall be applicable and the developments in the Area shall be regulated according to these rules."

Part-III of the Development Control Rules containing general provisions deals with building of special character, using for economically weaker section, 'Information Technology Park', etc. Rule 17

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(e) of the said rule specifically deals with development of land and building 'for the purpose of information technology', which reads as follows :-

> "17. (e) Information Technology Park (ITP)
> The development of land and building for the purposes to accelerate the growth of Information Technology including the manufacture of the hardware, development of software and its associated computer-communication technology applications shall conform to the rules for Information Technology Park given in Annexure XV."

Annexure XV contains rule for 'Information Technology Park', as detailed hereunder :-

"ANNEXURE – XV

RULES FOR INFORMATION TECHNOLOGY PARK

(See rule 17(e) of the Development Control Rules)

1. (a) The development of land and building for the purpose of development of Information Technology Park, Software and its associated, computer technology shall be certified by the appropriate authority designated by the Government for the purpose and shall be in the following use zones as indicated below:-

i) Primary Residential use zone;
ii) Mixed Residential use zone;
iii) Commercial use zone;
iv) Institutional use zone;
v) Light Industrial use zone;
vi) General Industrial use zone.

(b) Areas: The proposed development shall be permitted in the whole of Chennai Metropolitan Area, subject to the provision of adequate water supply and sewerage disposal arrangements to the satisfaction of the Authority in consultation with the Chennai Metropolitan Water Supply and Sewerage Board, Tamil Nadu Pollution Control Board, Local body as the case may be.

2. Activities: Manufacture of Hardware, development of software and its associated computer-communication technology application, including offices, conference halls and projection theatres connected therewith, only shall be permitted. No showrooms, other offices, residential uses and activities of similar nature shall be permitted. Provided that incidental activities such as staff canteen, staff recreational area, guest accommodation, watchmen quarters, and the like not exceeding 10 percent of the

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total floor area shall be permitted. Provided further that within, the above ceiling of 10 percent each of the above incidental activities should not exceed 5 percent of the total floor area.

3. Road width: The proposed development shall either about on a public road of not less than 18 metres in width or gain access from a passage of not less than 18 metres width which connects to a public road of not less than 18 metres width.

4. Site extent: The minimum site extent shall be not less than 2000 square metre.

5. Height: If the proposal relates to multi-storeyed building, the maximum permissible height of the building shall not exceed two times, the width of the abutting road or 60 metres, whichever is higher and for non-multistoryed building it should conform to the requirements as prescribed in the respective Development Control Rules. Development charges for multi-storeyed building shall be double if the height of the multi-storeyed building exceeds 2 times of the width of the abutting road.

6. Floor Space Index: The Floor Space Index for such development shall be allowed at 1.5 times of the Floor Space Index ordinarily permissible in Development Control Rules, if such proposals falls within the categories listed in the sub rule (a) above.

7. Caution Deposit: (a) 10 percent of the guideline value of the total land, or 20 percent of the guideline value of the land area equal to which additional floor area is availed, whichever is higher, shall be remitted by Demand Draft, drawn on any scheduled Bank in Chennai City, in favour of the Member Secretary, Chennai Metropolitan Development Authority as a refundable interest bearing Caution Deposit before issue of the Planning Permission.

(b) The Caution Deposit paid is refundable after a period of five years from complete occupation and commencement of commercial operation, subject to confirmation by a certificate from the designated authority certifying that the construction is put into continuous usage for Information Technology Parks for the said five year.

(c) If the building is utilised for any other purpose during this period, the caution deposit shall be forfeited.

(d) The rate of interest for the caution deposit would be

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on par with the State Bank of India's Five year period fixed deposit rate, which is in force on the date of drawal of the demand draft.

(e) The caution deposit referred to above shall be different from, and over and above, the security deposit to be paid in the normal course of issue of planning permission.

8. Car Parking Standards: The covered Car Parking space upto 50 percent over and above the rules of Development Control Rules will be allowed upto and inclusive of first floor and the same shall not be included in the floor space Index.

9. Other Parameters: Except for the abovesaid rules, the developments shall conform to the Development Control Rules in respect of all other parameters."

5. From the aforesaid Rule 17 (e) read with Annexure XV enclosed to the said rule, it will be evident that the development of land and building for the purpose of development of information technology park, software and its associated computer technology in a "Mixed Residential Use Zone" is permitted under the said rule. As a matter of fact, the said rule promotes development of Information Technology Park, software and its associated computer technology, etc., even in other zones, including primary residential use zone.

6. Mr.P.S.Raman, Addl. Advocate General, tried to suggest that Rule 17 (e) and Annexure XV is contradictory to clause (iii) (a) of the 2nd Explanation to Rule 4, but such submission has no legs to stand as evident from clause (iii) (a) of 2nd Explanation to Rule 4 and quoted above. Therefore, we are of the opinion that the reasons contained in the impugned order of the appellant, as also highlighted before this Court, is not in conformity with the rules and annexures to the Development Control Rules as referred to and quoted above and, thereby, no interference is called for with the order passed by learned single Judge.

7. There being no merit, the writ appeal is dismissed. Consequently, connected miscellaneous petition is also dismissed. But there shall be no order as to costs.

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sd/-
Asst.Registrar

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Sub Asst.Registrar

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GLN

To

1. The Member Secretary
   Chennai Metropolitan Development
   Authority
   No.1, Gandhi Irwin Road
   Egmore, Chennai 600 008.

2. The Commissioner
   Corporation of Chennai
   Rippon Building, Chennai 600 003.

+ one cc to Mr. C. Kathiravan, Advocate, SR.75210.

+ Three ccs to Mr. S. Ramesh, Advocate, SR. 75109 & 71680

+ one cc to Mr. A. Mohamed ghouse, Advocate, SR.75528.

SCD(CO)
RP 20.12.2007.

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